In the High Court of Uttaranchal at Nainital.

Criminal Revision No. 44/2001
(Old No. 964 of 1987)

1. Dhan Singh)
2. Tika Singh) –sons of Himmat Singh,
3. Himmat Singh son of Gulab Singh,
4. Deoki Devi wife of Himmat Singh,

All residents of village Dmalli Chapari Patti Chhetra Panuva Naula, Tehsil Almora, District Almora …….. Revisionists.

Vs.

State of U.P. ……. Respondent.

Sri B.S.Adhikari, learned counsel for the revisionists.
Sri H.C. Pandey, learned A.G.A. for the respondent.

Date of Judgment : 24-3-2004.

Hon'ble Irshad Hussain, J.

This criminal revision under section 397/401 of the Code of Criminal Procedure has been filed against the judgment and order dated 4.4.1987 passed by Sessions Judge Almora in criminal appeal no. 14 of 1986 dismissing the appeal and upholding the conviction and sentences passed against the order dated 4.8.1986 passed by the then Munsif Magistrate, Almora in criminal case no. 208/1986 and 209 /1986 convicting the revisionists under section 394/34, 353, 332 I.P.C. and further convicting revisionist Deoki Devi under section 324 I.P.C. and the revisionist Dhan Singh under section 25 Arms Act and sentencing the revisionists Dhan Singh and Tika Singh to two years R.I. and a fine of Rs. 250/00 each under section 394/34 I.P.C. and under section 353 I.P.C. to six month R.. and under section 332 I.P.C. to six month R.I. and also sentencing the revisionist Dhan Singh under Section 25 Arms Act to six months R.I. and directing their sentences to run concurrently and also directing the revisionists Himmat Singh and Smt. Devki Devi to be released on probation for maintenance peace and good conduct for a

period of one year subject to execution of personal bond for Rs. 3000/- each with two sureties in the like amount.

The prosecution has, in the case against the revisionists, come up with the allegation that on 21-8-1983 P.W.1, Ganga Singh Patwari accompanied by P.W.2, Girish Chandra Joshi Kanoongo went to the village of the revisionists in connection with the investigation of illegal felling of forest trees. The case under section 379 I.P.C. was being investigated against Dhand Singh and Tika Singh who are also the two revisionists here. At about 11.30 A.M. these two and Himmat Singh and his wife Smt. Deoki Devi interfered in the work of the said Patwari and resorted to brick-batting. They also attacked the said victim by wielding a sickle and a Belcha and revisionist Dhan Singh also snatched away the gun possessed by the said victim P.W.1. The victim also sustained injuries in the incident. A report of the incident was lodged and on completion of the investigation charge sheet was submitted and these revisionists were sent up to stands trial for the offences punishable under sections 394, 353, 332 and 324 I.P.C. under criminal case no. 208/1986 whereas revisionist Dhan Singh was also sent up to stand trial for an offence punishable under section 25 Arms Act under criminal case no. 209/1986.

The two criminal cases were consolidated and tried together by the then Munsif Magistrate, Almora and the revisionists were convicted and sentenced as aforesaid. Their appeal was dismissed against which the present revision had been preferred way back in the year 1987.

The learned counsel for the revisionists submitted that the revisionists and their counsel failed to appear on the date fixed in the appeal and therefore could not put forward their submissions before the learned Sessions Judge and on account of absence of opportunity to assail the judgment of the learned Magistrate their appeal got dismissed without proper and fair appraisal of the evidence of the prosecution. Perusal of the judgment of the learned Sessions Judge passed in the said appeal indicate that the evidence was however considered in proper perspective and there is nothing to show that absence of the revisionists or their counsel before the appellate court had resulted in miscarriage of

justice or in any was decision of the appeal was without appraisal of the evidence.

Even otherwise having considered the evidence I am of the view that there was reliable evidence to prove the charges against the revisionists. P.W.1, Ganga Singh supported the prosecution version in his evidence on oath and his evidence was corroborated by another witness P.W.2 Girish Chandra Joshi. P.W.1 was injured in the occurrence and this fact is a guarantee of his presence there at the scene and in the totality of the circumstances of the case his evidence supported by another witness was sufficient to prove the allegations against the revisionists. It is also of significance that revisionist Dhan Singh has in his statement under section 313 of the Code of Criminal Procedure admitted that he took away the gun of the victim P.W.1 and later on handed it over to the police. Although he gave the explanation that this act was done to save himself being guilty but there is nothing in the cross examination of the prosecution witness as may in any way give an inkling that P.W.1 was willing or attempted to cause any harm to the said revisionists. The evidence therefore was sufficient to bring home guilt to the revisionists and neither the Magistrate nor learned Sessions Judge made any error in appreciation of the evidence against the revisionists. In fact the revisionists have rightly been convicted for the offences leveled against them.

Learned counsel for the revisionists also argued that the injuries shown to have been sustained by P.W.1 were not serious and further that the revisionist Dhan Singh had himself gone to the police station to hand over the gun and therefore in the totality of the circumstances of the case a more lenient view should have been taken in the matter of sentence awarded against the revisionists. It has also been pointed out that the revisionists who have been sentenced to imprisonment have remained under detention during the inquiry and trial for more than three months and the learned counsel therefore submitted that ends of justice will be satisfied if the sentence of imprisonment is modified to the sentence of imprisonment already undergone. Another glaring aspect referred in this regard is the report regarding serious illness of revisionist Dhan Singh who on account of illness is confined to bed. On the application of the

revisionist a report was received to this effect from the circle patwari and this is also one of the mitigating circumstance in considering the submission of the learned counsel regarding the modification in the period of sentence awarded to the revisionists. As mentioned above out of the four revisionists two were released on probation and the other two revisionists namely Dhan Singh and Tika Singh were sentenced to imprisonment together with fine for the charges proved against them. Considering mitigating circumstances and other factors referred in the argument of the learned counsel for the revisionists it is a fit case in which ends of justice require that the sentence of the imprisonment of these two revisionists is modified and reduced to the period of imprisonment already undergone by them and the sentence of fine be maintained.

The revision is therefore partly allowed. The conviction of the revisionists is maintained. The sentence awarded against the revisionists Dhan Singh and Tika Singh is modified and reduced to the sentence of imprisonment already undergone but the sentence of fine is maintained.

Since at the time of the admission of the revision the prayer for stay of realization of the fine was rejected and in view thereof learned counsel for the revisionists submitted that the fine had been deposited before the trial court. Considering this compliance is not required from the trial court. The revisionists are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.

(Irshad Hussain, J.)

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